



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 10, 2002

Mr. Tim Molina
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR2002-7017

Dear Mr. Molina:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173367.

The Office of the Attorney General (the "attorney general") received a request for copies of records from January 1998 to present pertaining to Park Manor, HCC/Park Manor, Inc. You state that you have released some responsive information to the requestor. You claim, however, that the remaining requested information, or portions thereof, that is held by the attorney general's Medicaid Fraud Control Unit (the "MFCU") is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

You claim that the information at issue is excepted from disclosure in its entirety pursuant to section 552.101 in conjunction with section 242.127 of the Health and Safety Code.² Subchapter E of chapter 242 of the Health and Safety Code concerns reports of abuse and neglect at convalescent and nursing homes and related institutions. *See Health & Safety*

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101.* Section 552.101 encompasses information that is protected from disclosure by other statutes.

Code §§ 242.121 *et seq.* Section 242.127 provides that “[a] report, record, or other working paper used or developed in an investigation made under [subchapter E, chapter 242 is] . . . confidential and may be disclosed only for purposes consistent with rules adopted by the [Texas Department of Human Services (the “DHS”)] or the designated agency.” Health & Safety Code § 242.127; *see also id.* § 242.126 (investigation of complaint of abuse or neglect by DHS or designated agency).

You state that the documents submitted to this office for review consist of reports, records, or working papers used or developed in an investigation under subchapter E. You inform us that the information at issue concerns an abuse investigation that DHS referred to the MFCU. You also inform us that the information at issue consists of documents that the MFCU obtained from the DHS, as well as documents that the MFCU obtained or generated in the course of its investigation of the allegations. Moreover, you state that the MFCU is charged under federal law with conducting “a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan” and reviewing “abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan. . . .” *See* 42 C.F.R. § 1007; *see also* 42 U.S.C. § 1396.

After reviewing the submitted investigative documents regarding “Case No. MF022068-01-0 - Park Manor Nursing Home,” we find that the entirety of this information should be afforded the protection granted in section 242.127 of the Health and Safety Code because of the close coordination that existed in this matter between the attorney general and the DHS. Because you have not advised us of any rules permitting the disclosure of this information, we, thus, conclude that the entirety of the submitted information is made confidential under section 242.127 and therefore must be withheld pursuant to section 552.101 of the Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³Because we resolve your request under section 242.127 of the Health and Safety Code, we need not address the applicability of your remaining claims.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

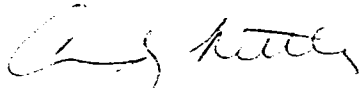
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

Mr. Tim Molina - Page 4

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy M. Nettles
Assistant Attorney General
Open Records Division

CNM/lmt

Ref: ID# 173367

Enc. Submitted documents

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(w/o enclosures)